

Pursuant to K.S.A. 44-551, as amended by S.B. 59 (1995), a party is entitled to appeal from a preliminary hearing if it is argued that an administrative law judge exceeded his or her jurisdiction in granting or denying the benefits requested. As the respondent has alleged that the Administrative Law Judge exceeded his jurisdiction in allowing a preliminary hearing without requiring a benefit review conference, this issue is properly before the Appeals Board upon appeal from the preliminary hearing.

When an application for hearing has been filed pursuant to K.S.A. 44-534 the employee or employer may make application for a preliminary hearing on the issues of furnishing medical treatment and the payment of temporary total disability compensation. The appropriate procedure to follow is listed in K.S.A. 44-534a.

If the parties are unable to agree to the benefits requested then either party may seek a preliminary hearing by filing the appropriate application with the Director. Once this document is filed the Director "shall conduct a benefit review conference within 15 days after receipt of the application for preliminary hearing, to attempt to resolve the issues raised. If the issues cannot be resolved by the benefit review conference, the director shall assign the application to an administrative law judge who shall set the matter for a preliminary hearing and shall give at least seven days written notice by mail to the parties of the date set for such hearing." K.S.A. 44-534a(a)(1).

Standing alone, the language of the statute appears to be clear that a mandate for a benefit review conference exists, by law.

However, K.S.A. 44-5,111(a) states in part:

"Upon receipt of an application for a preliminary hearing pursuant to K.S.A. 44-534a and amendments thereto, or on a written request of any party to a disputed workers compensation claim, the director of workers compensation may require the parties to meet in a benefit review conference to attempt to reach agreement on disputed issues involved in the claim."

When considering the language of K.S.A. 44-5,111, the language of K.S.A. 44-534a can be read in a different light. If the Director decides that the issues cannot be resolved by benefit review conference, then perhaps the matter may go directly to preliminary hearing. The legislature cannot have intended that a futile hearing be required when there is no possible hope that the issues in dispute can be resolved. Benefit review officers are very limited in the scope of their authority, having practically no decision-making powers, absent an agreement of the parties. Thus, if the positions of the parties are sufficiently diverse that no possible resolution can be reached absent a judicial ruling by an administrative law judge, then to require the parties to proceed to benefit review conference would be a waste of the time of all involved.

It is noted that the language of K.S.A. 44-5,111 is specifically related to benefit review conferences and the necessity for same. K.S.A. 44-5,111 was created by the legislature when benefit review conferences were created. As such it would appear the language of a specific statute dealing directly with the issue at hand should be given more weight than the language of a general statute.

The Appeals Board finds the language of K.S.A. 44-5,111 to be controlling in this matter and, as such, in a situation where the Director does not believe the issues can be resolved by benefit review conference, then the Director would have the option to order that the parties proceed directly to preliminary hearing.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Administrative Law Judge did not exceed his jurisdiction in hearing and deciding the issues of preliminary hearing without the matter having first been to a benefit review conference and the Order of Administrative Law Judge Alvin E. Witwer dated October 20, 1995, should be and is hereby, approved in all respects.

IT IS SO ORDERED.

Dated this ____ day of December 1995.

BOARD MEMBER _____

BOARD MEMBER _____

BOARD MEMBER _____

c: Daniel L. Smith, Overland Park, KS
Clifford K. Stubbs, Lenexa, KS
Alvin E. Witwer, Administrative Law Judge
Philip Harness, Director